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CONTEMPORARY FORMS OF SLAVERY

Working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict, submitted by Ms. Linda Chavez in accordance with Subcommission decision 1994/109

GE.95-17978 (E)

Introduction

1. At its forty-sixth session, the Subcommission took note of the information received concerning slavery and slavery-like practices during wartime, and by decision 1994/109 invited Ms. Linda Chavez to submit a working paper on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict, at the forty-seventh session of the Subcommission.

2. Rape (non-consensual intercourse through the use of physical force, threats or intimidation) is an unfortunate and widespread phenomenon which has particularly devastating consequences on the enjoyment of the basic right to dignity and security of person of women, who comprise the greatest number of victims of rape. Systematic rape can be and is used as an instrument of torture or as an abhorrent instrument of warfare. Custodial rape, or rape in circumstances in which the Government is responsible under the law of State responsibility, is well recognized as a violation of the prohibition against torture or inhuman treatment in international human rights law. In these instances, rape violates fundamental principles and rules of international law, in particular humanitarian and human rights law. Rape committed by soldiers has been prohibited by law for centuries. None the less, in many situations, soldiers have been given license to rape as an instrument of policy. Forced prostitution during wartime has also been practised on a large scale.

3. It has been reported that between 1932 and the end of the Second World War approximately 200,000 women were forcibly conscripted into prostitution by the Japanese Imperial Army. 1/ The Japanese military was responsible for the establishment, operation and management of "comfort" stations. The majority of these "comfort women" were from Korea, but others were also drawn from China, Indonesia, the Philippines and other Asian countries under Japanese control. Many were young girls between the ages of 11 and 20. The Japanese military was sometimes directly involved in abducting the women and provided military transportation to the "comfort" station sites in areas as remote as Burma and some South Pacific islands. Various methods of drafting the women (including physical violence, kidnapping and deception) were used to carry out the official policy of providing sexual services to Japanese soldiers. Former victims have testified that they had to endure multiple rapes on an everyday basis, suffered severe physical abuse, and were exposed to sexually transmitted diseases. Although no reliable estimate exists of the number of women who perished under such conditions, the accounts of those women who survived and have recently come forward to tell of their ordeal suggest many thousands died during the war. Some were reportedly killed by Japanese soldiers fleeing in retreat from Allied forces; others were abandoned in sometimes dangerous war zones, where they fell victim to Allied air attacks or were simply lost in remote jungles. 2/

4. The United Nations Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia has reported to the Commission that during the past three years in the former Yugoslavia, rape of women and girls

has occurred on a large scale, with possibly as many as 20,000 victims. It appears that no attempts have been made by either military or political authorities to stop the practice. There is clear evidence that Croat, Muslim and Serb women have been detained, some in special camps organized solely for the purpose of sexual abuse, for extended periods of time and repeatedly raped (see E/CN.4/1993/50). The Special Rapporteur on violence against women noted in her report that mass rape, sexual abuse and forced pregnancies of women in Bosnia and Herzegovina are considered to be important elements of the Serb policy of "ethnic cleansing" (E/CN.4/1995/42, para. 268).

5. Pursuant to the mandate for this working paper, Ms. Chavez was requested to examine the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict.

6. The purpose of the working paper is to outline issues that might be the subject of a further in-depth study. Among those issues are the following topics:

(a) The history of systematic rape as an instrument of policy, with special emphasis on the broad-scale use of rape, sexual slavery and slavery-like practices during wars, including armed conflicts, in this century;

(b) Rape as a violation of international human rights law and a crime under international humanitarian law, including the evolving definition of rape as a war crime;

(c) Reparation for victims of systematic rape, sexual slavery and slavery-like practices during situations of armed conflict.

7. The first part of the study, to be completed for the forty-eighth session of the Subcommission, would consist of the following sections:

(a) Purpose and scope of the study;

(b) Historical overview of the use of systematic rape as an instrument of policy;

(c) Relevant existing norms in international human rights and humanitarian law;

(d) Issues of responsibility and liability;

(e) Forums with potential jurisdiction to try perpetrators of mass rape and sexual slavery during times of armed conflict;

(f) Possible sanctions against violators of the international law relevant to this subject;

(g) Possible forms of reparations, including compensation, rehabilitation and restitution.

8. The second part of the study, to be completed for the forty-ninth session of the Subcommission, would explore ways to prevent systematic rape during wartime and in periods of internal conflict. It would discuss methods of deterrence and prevention, explore impediments to deterrence and prevention, and contain final remarks and present conclusions and recommendations.

9. In pursuing such a study, the following principles and approaches should be considered:

(a) General:

(i) Should rape be recognized specifically as a form of torture, a war crime and a crime against humanity?

(ii) Should the underlying motives for rape and sexual slavery in times of armed conflict be studied more carefully?

(iii) The victims of these atrocities should be treated at all times with respect and understanding. All agencies and mechanisms dealing with human rights and humanitarian issues should be mindful of the perspective of victims of systematic rape and sexual abuse, and of the fact that victims suffer long-term consequences. A further possibility for study is the silence of victims. Reasons for reluctance to report wartime rape may include shame and social stigma, fear of awakening bad memories, fear of reprisals, a lack of trust in the judicial system and the national legislature, and the belief in the absence of remedies;

(iv) The Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights, Mr. Theo van Boven, stated that more systematic attention should be given at both the national and international levels to the implementation of the right to reparation for victims of gross violations of human rights and humanitarian norms. The United Nations could contribute by standard-setting, conducting studies, producing reports, establishing relief and redress procedures, and pursuing practical actions such as those designed by the United Nations Voluntary Fund for Victims of Torture and the Voluntary Trust Fund on Contemporary Forms of Slavery (E/CN.4/Sub.2/1993/8, para. 133).

(b) United Nations and other intergovernmental actors:

(i) Should international war crimes commissions and tribunals make a special effort to investigate allegations of and prosecute gender-specific war crimes of violence against women? Would a permanent criminal court with an impartial enforcement mechanism ensure that the strong body of international human rights and humanitarian law provide adequate protection for women?

(ii) Should new instruments, where appropriate, include express language prohibiting sexual abuse and slavery of women at all times, and provide for the right to effective remedy and reparation? Should consideration be given to amending existing instruments in this regard?

(iii) Should international treaty bodies that monitor the observance of human rights consistently pay attention to violations in the form of systematic rape, as well as to the question of reparation for victims?

(iv) Should more attention be paid to aspects of State responsibility that relate to a State's obligation to respect and ensure the human rights of individuals?

(c) States:

(i) Should States acknowledge their duty to make reparation for their breaches of international humanitarian and human rights law? This duty may include investigation of violations, taking appropriate action, including prosecution and punishment, against the perpetrators, and affording remedies to victims. Should States also ensure that no person shall have immunity from liability for their actions which violate the law? Should reparation be proportionate to the gravity of the violations and the resulting harm, and include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition? Should, as Mr. van Boven suggests, the immediate family, dependents or other persons having a special relationship to the victim be able to claim reparation in addition to the victim (E/CN.4/Sub.2/1993/8, para. 137, general principle 6)?

(ii) How may States provide court or administrative procedures for redress against those responsible for systematic rape on the basis of universal or personal jurisdiction over the perpetrator? Such procedures might, at the very least, establish the culpability of war criminals and limit their movement.

(iii) Should States support, financially and otherwise, the international war crimes tribunals? Could States assist by providing evidence, gathering information and extraditing indicted criminals?

(iv) Should measures of prevention and deterrence be strengthened? Should all States train their armed forces and law enforcement personnel in the standards of international human rights and humanitarian law?

(d) Non-governmental organizations:

(i) Should non-governmental organizations encourage and help individuals in the filing of lawsuits and the pursuit of other civil remedies against perpetrators of mass rape?

(ii) What role should non-governmental organizations play in the area of educating potential perpetrators as to what conduct violates international law, and educating both victims and potential victims in regard to their rights?

(iii) Can non-governmental organizations assist by gathering evidence against perpetrators and compiling information about situations in which wide-scale sexual abuse has occurred? Non-governmental organizations should be invited to submit any information they may have on situations of sexual abuse and slavery of women during times of armed conflict.

Notes

1/ See the preliminary report of the Special Rapporteur on violence against women (E/CN.4/1995/42, paras. 286-292); the report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN.4/Sub.2/1993/30, paras. 80-87) and on its nineteenth session (E/CN.4/Sub.2/1994/33, paras. 89-97); see also Ustinia Dolgopol and Snehal Paranjabe, Comfort Women: an Unfinished Ordeal, International Commission of Jurists, Switzerland, 1992.

2/ On 20-31 May 1995, Ms. Chavez visited Manila, Seoul and Tokyo in her private capacity, interviewing former "comfort women", former soldiers of the Japanese Imperial Forces and representatives of non-governmental organizations. They corroborated the information contained in other published reports, as well as providing new information for this working paper. She also met with officials from the Governments of the Philippines, the Republic of Korea and Japan, who provided additional helpful information on the issue.